87 1058

Supreme Court, U.S.
FILED
DEC 23 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

PETE A. MORRISON,

Petitioner,

v.

GENUINE PARTS COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

JOE R. WHATLEY, JR.
FALKENBERRY & WHATLEY
Fifth Floor Title Building
300 Twenty-First Street North
Birmingham, Alabama 35203
(205) 322-1100
Attorney for Petitioner
Pete A. Morrison

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED

After an Employee is Willfully Denied a Promotion in Violation of the Age Discrimination in Employment Act, does a Resignation from a Lesser Job Conclusively Bar Him from Being Awarded the Illegally denied Job or Front Pay?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iv
CITATIONS TO OPINIONS BELOW	1
JURISDICTION	1
STATUTES INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	3
I. THE RULING BELOW VIOLATES THE "MAKE WHOLE" REMEDIAL PURPOSE OF THE FEDERAL DISCRIMINATION LAWS	3
II. THERE IS A CONFLICT BETWEEN THE CIRCUITS	5
CONCLUSION	6

TABLE OF AUTHORITIES

CASES	Page
Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975)	4
Bell v. Hood, 327 U.S. 678 (1946)	4
Brown v. Swann, 10 Pet. 497 (1836)	4
Franks v. Bowman Transportation Co., 424 U.S. 747, 761 *et seq.* (1976)	4
Louisiana v. United States, 380 U.S. 145 (1965)	4
Porter v. Warner Holding Co., 328 U.S. 395 (1946)	4
Spagnuolo v. Whirlpool Corp., 641 F.2d 1109 (4th Cir. 1981)	5
Wicker v. Hoppock, 6 Wall. 94 (1867)	4
STATUTES	
28 U.S.C. § 1254(1)	1
29 U.S.C. § 626(c)(1)	2, 3
MISCELLANEOUS	
2 1967 U.S. Code Cong. & Adm. News 2213	3
3 1978 U.S. Code Cong. & Adm. News 528	3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

No. 87-

PETE A. MORRISON,

Petitioner,

v.

GENUINE PARTS COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

CITATIONS TO OPINIONS BELOW

Review is sought of an opinion from the United States Court of Appeals for the Eleventh Circuit, published at 828 F.2d 708 (11th Cir. 1987). The opinion was issued on September 28, 1987. It held in pertinent part that where an employee is denied a promotion in violation of the Age Discrimination and Employment Act, that employee may receive neither front pay nor an award of the illegally denied position if that employee chooses to resign from some lesser position between the date of the illegal act and the date of his trial. The verdict, opinions and orders of the district court are unpublished but are included in the Appendix.

JURISDICTION

The opinion of the Court of Appeals was entered on September 28, 1987. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTES INVOLVED

29 U.S.C. § 626(c)(1)

Any person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this [Age Discrimination in Employment] Act.

STATEMENT OF THE CASE

This is an age discrimination case where the employer has been found guilty of willful age discrimination in denying Pete Morrison a promotion to the position of stock room supervisor.

However, the trial court refused to award Morrison the job of stock room supervisor, or alternatively some amount of front pay, because after he had been illegally denied the position of stock room supervisor, Morrison resigned from a lesser position with the employer.

It should be noted that the employer never raised any affirmative defense such as waiver or estoppel which might have barred the equitable relief requested by Morrison.

On appeal, the United States Court of Appeals for the Eleventh Circuit affirmed, addressing the issue raised in this petition only in footnote stating:

> The district court having properly determined that there was no constructive discharge in this case, it is apparent that the termination of Morrison's employment resulted from voluntary resignation. Accordingly, the district court was also correct in denying front pay and reinstatement.

828 F.2d at 709 n.1.

The illegal act resulting in the denial of the promotion and the loss of the increase in pay occurred before Morrison's resignation.

REASONS FOR GRANTING THE WRIT

The Court should grant the writ of certiorari because the holding of the courts below violates the well developed principle that a victim of employment discrimination should be made whole in any remedy. When Morrison was illegally denied a promotion, he became entitled to the award of that job, or some other appropriate relief such as front pay. A subsequent resignation has no effect on that entitlement.

Moreover, the ruling of the Court of Appeals for the Eleventh Circuit in this case conflicts with a ruling from the Court of Appeals for the Fourth Circuit.

I. THE RULING BELOW VIOLATES THE "MAKE WHOLE" REMEDIAL PURPOSE OF THE FEDERAL DISCRIMINATION LAWS.

The ruling of the United States Court of Appeals for the Eleventh Circuit violates the "make whole" remedial purpose of the federal discrimination laws.

The Age Discrimination in Employment Act truly rose out of Title VII of the 1964 Civil Rights Act. As noted in H. R. 805, § 715 of Title VII "direct[ed] the Secretary of Labor to make a study of the problem of age discrimination in employment." 2 1967 U.S. Code Cong. & Adm. News 2213, 2214. That study then prompted the ADEA. *Id.*

The ADEA provides that: "Any person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this Act." § 7(c) P.L. 90-202, 29 U.S.C. § 626(c)(1). The remedial purpose is to make whole the victims of illegal discrimination or "to provide full compensatory relief for losses. . . ." House Conf. Rep. No. 95-950, 3 1978 U.S. Code Cong. & Adm. News 528, 535.

This Court has discussed the "make whole" purpose of the federal discrimination laws most thoroughly in Title

VII cases. First, in *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 418-19 (1975), the Court stated:

> It is also the purpose of Title VII to make persons whole for injuries suffered on account of unlawful employment discrimination. This is shown by the very fact that Congress took care to arm the courts with full equitable powers. For it is the historic purpose of equity to "secur[e] complete justice," *Brown v. Swann*, 10 Pet. 497, 503 (1836); see also *Porter v. Warner Holding Co.*, 328 U.S. 395, 397-398 (1946). "[W]here federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief." *Bell v. Hood*, 327 U.S. 678, 684 (1946). Title VII deals with legal injuries of an economic character occasioned by racial or other antiminority discrimination. The terms "complete justice" and "necessary relief" have acquired a clear meaning in such circumstances. Where racial discrimination is concerned, "the [district] court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." *Louisiana v. United States*, 380 U.S. 145, 154 (1965). And where a legal injury is of an economic character,
>
> > "[t]he general rule is, that when a wrong has been done, and the law gives a remedy, the compensation shall be equal to the injury. The latter is the standard by which the former is to be measured. The injured party is to be placed, as near as may be, in the situation he would have occupied if the wrong had not been committed." *Wicker v. Hoppock*, 6 Wall. 94, 99 (1867).
>
> The "make whole" purpose of Title VII is made evident by the legislative history.

In *Franks v. Bowman Transportation Co.*, 424 U.S. 747, 761 *et seq.* (1976), the Court expanded on the

"'make whole' purposes" of the federal discrimination laws. The Court quoted Congress as saying:

> [T]he Act is intended to make the victims of unlawful employment discrimination whole, and . . . the attainment of this objective . . . requires that persons aggrieved by the employment practice be, so far as possible, restored to a position where they would have been were it not for unlawful discrimination.

Id. at 764.

Morrison simply has not been made whole for his employer's illegal denial of his promotion.

II. THERE IS A CONFLICT BETWEEN THE CIRCUITS

In *Spagnuolo v. Whirlpool Corp.*, 641 F.2d 1109 (4th Cir. 1981), the Court affirmed the award of reinstatement where the employee was demoted in violation of the ADEA from the position in question and then resigned to take a position with a competitor. Here, the Eleventh Circuit has ruled as a matter of law that an employee cannot be awarded a position he was denied in violation of the ADEA if the employee subsequently resigns from employment with the defendant.

The writ of certiorari should be granted because the Court of Appeals' opinion is in conflict with the principles developed by this Court that a victim of discrimination should be made whole in the relief granted by a trial court and in that the decision is in conflict with the decision of another federal court of appeals.

CONCLUSION

For the foregoing reasons, the writ of certiorari should be granted.

Respectfully submitted,

JOE R. WHATLEY, JR.
FALKENBERRY & WHATLEY
Fifth Floor Title Building
300 Twenty-First Street North
Birmingham, Alabama 35203
(205) 322-1100
Attorney for Petitioner
Pete A. Morrison

APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

Nos. 86-7480, 86-7521

PETE A. MORRISON,
Plaintiff-Appellant,
Cross-Appellee,

v.

GENUINE PARTS COMPANY,
Defendant-Appellee,
Cross-Appellant.

Sept. 28, 1987

Joe R. Whatley, Falkenberry, Whatley & Heidt, Birmingham, Ala., for plaintiff-appellant, cross-appellee.

Paul Beshears, Smith, Currie & Hancock, George McPherson, Atlanta, Ga., for defendant-appellee, cross-appellant.

Appeals from the United States District Court for the Northern District of Alabama.

Before HATCHETT and ANDERSON, Circuit Judges, and TUTTLE, Senior Circuit Judge.

PER CURIAM:

Morrison filed this action against his employer, Genuine Parts Company ("Genuine Parts"), alleging age discrimination in violation of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. 621. Morrison

alleged two violations: (1) that Genuine Parts failed to promote him; and (2) that Genuine Parts constructively discharged him. The case went to trial by jury, and at the close of Morrison's case, the court directed a verdict against Morrison on the constructive discharge claim. The jury returned a verdict in Morrison's favor on the promotion claim. The parties had stipulated to the amount of damages on the promotion claim, namely $3,566.62, although the district court later found that Morrison's actual damages were only $92.25. Morrison also claimed liquidated damages, which under the relevant statute amounts to a doubling of the actual damages.

The district court awarded plaintiff $3,566.62, pursuant to the stipulation on the promotion claim, plus $92.25 in liquidated damages. In effect, the district court held Genuine Parts to its stipulation as to the amount of actual damages notwithstanding the fact that the stipulation was in error. However, to avoid doubling the effects of the error, the district court relieved Genuine Parts from the effect of its stipulation with respect to liquidated damages.

The only issue on appeal that warrants discussion [1] is Morrison's argument that the district court abused its discretion in relieving Genuine Parts from the effect of its stipulation on the calculation of liquidated damages. Because the district court has broad discretion in determining whether to hold a party to its stipulation, *Coastal*

---

[1] Morrison also challenges the district court's direction of a verdict in favor of Genuine Parts on the constructive discharge issue. That issue is controlled by *Wardwell v. School Board of Palm Beach County*, 786 F.2d 1554 (11th Cir. 1986) (holding that mere failure to promote is not sufficient to support a finding of constructive discharge). The district court having properly determined that there was no constructive discharge in this case, it is apparent that the termination of Morrison's employment resulted from voluntary resignation. Accordingly, the district court was also correct in denying front pay and reinstatement. The other issues raised on appeal are without merit and warrant no discussion.

States Marketing, Inc. v. Hunt, 694 F.2d 1358, 1369 (5th Cir.1983), *relying on Del Rio Distributing, Inc. v. Adolph Coors Co.*, 589 F.2d 176, 178 (5th Cir.1979) (holding that "trial judge is vested with broad discretion in determining whether . . . a pre-trial order should be modified or amended."),[2] we find no error here. We conclude that the district court was acting well within its discretionary and equitable powers in refusing to relieve Genuine Parts from its erroneous stipulation with respect to actual damages, and in relieving Genuine Parts from this stipulation with respect to liquidated damages. The district court could have concluded that while holding Genuine Parts to its stipulation with regard to actual damages was appropriate under the circumstances, a doubling of the erroneous stipulation would have resulted in the kind of "manifest injustice" disapproved in *Central Distributors, Inc. v. M.E.T., Inc.*, 403 F.2d 943, 945 (5th Cir. 1968). Under such circumstances the district court had discretion to relieve Genuine Parts from its stipulation with respect to liquidated damages.

AFFIRMED.

---

[2] The *Coors* case was decided prior to the close of business on September 30, 1981, and is binding precedent under *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981).

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Civil Action No. 85-AR-2564-S

PETE A. MORRISON,
Plaintiff

vs.

GENUINE PARTS COMPANY,
Defendant

[Filed June 19, 1986]

ORDER

In conformity with the accompanying Memorandum Opinion, plaintiff's request for injunctive relief is DENIED.

Costs are taxed against defendant.

DONE this 19th day of June, 1986.

/s/ William M. Acker, Jr.
WILLIAM M. ACKER, JR.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Civil Action No. 85-AR-2564-S

PETE A. MORRISON,
Plaintiff

vs.

GENUINE PARTS COMPANY,
Defendant

[Filed June 19, 1986]

MEMORANDUM OPINION

The court deferred ruling on the request of plaintiff, Pete A. Morrison, for instatement in the position of stockroom manager until the court could study the briefs and authorities submitted by both parties on the issue.

First, any grant of mandatory injunctive relief must be based on general principles of equity. In this case if the court should order Morrison into the position of stockroom manager the necessary effect would be to cause the demotion, termination or transfer of the present holder of that position. Two people cannot occupy the same job. While this result should not be the controlling factor in determining whether or not to grant such prospective relief, it may be considered together with the other pertinent factors as to what constitutes "equity" under the circumstances.

Secondly, Morrison is presently employed as a warehouse manager by another employer and, for aught appearing, has a satisfactory relationship with his new employer and is being adequately compensated.

The third and perhaps the most important factor in determining whether or not to instate Morrison as stockroom manager is the fact that Morrison voluntarily resigned as assistant stockroom manager, a matter of fact and law previously found by the court when it granted Genuine Parts' motion for directed verdict as to that aspect of Morrison's complaint claiming a constructive discharge. Although there is no Eleventh Circuit case directly in point, plaintiff's argument is based on a hopeful expansion of *Spagnuolo v. Whirlpool Corp.*, 641 F.2d 1109, 1114 (4th Cir. 1981). This court does not read *Spagnuolo* to stand for the proposition pressed upon the court by Morrison. If *Spagnuolo* can be construed to stand for that proposition, this court is not bound by the Fourth Circuit. This court is more persuaded by the D.C. Circuit in *Clark v. Marsh*, 665 F.2d 1168 (D.C. Cir. 1981), which borowed from the Fifth Circuit's rationale in *Bourque v. Powell Electrical Manufacturing Company*, 617 F.2d 61 (5th Cir. 1980), and applied it to an employee's request for instatement after a denial of promotion, and said:

> We readily agree that plaintiff's recovery for the period subsequent to her retirement must rest upon proof *that she 'was [not] the responsible agent in [her] own termination'*. (emphasis supplied).

665 F.2d at 1172.

The D.C. Circuit went on to find that a constructive discharge had, in fact, there taken place, opening up for it the possibility of instatement. If this court committed error in concluding that Morrison was not constructively discharged, then the option of instatement would be open to it on remand. This court does not think it committed

error in this regard in light of *Bourque*, which is binding on this court, and which gives logic to the conclusion that where an employee voluntarily terminates his employment he gives up all claims for reinstatement or for instatement. Another district court has reached a similar conclusion in a published decision. *See, e.g., Adler v. John Carroll University*, 549 F.Supp. 652, 656 (N.D. Ohio, 1982). Honorable Sam C. Pointer, Jr., Chief Judge of this court, in an unpublished opinion, held, in a case directly in point, that voluntary separation precludes all rights to be placed in a higher job position which had been sought and denied. As this court has held, Morrison's frustration and disappointment, while understandable, did not create an intolerable set of working conditions. If it were otherwise, any disappointed employee can create a jury question on "constructive discharge" by the expedient of turning in his resignation shortly after his disappointment.

By separate order plaintiff's request for injunctive relief will be denied.

The court sincerely suggests that the parties resolve by settlement the only remaining issue, namely, the fees and expenses due plaintiff under 42 U.S.C. § 1988.

DONE this 19th day of June, 1986.

/s/ William M. Acker, Jr.
WILLIAM M. ACKER, JR.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Civil Action No. CV 85-AR-2564-S

PETE A. MORRISON,
Plaintiff,
v.
GENUINE PARTS COMPANY,
Defendant.

[Filed June 26, 1986]

MOTION TO ALTER OR AMEND JUDGMENT

Plaintiff moves for the Court to alter or amend its judgment, to award plaintiff front pay, based on the following:

1. In the Complaint and in the Pre-Trial Order, plaintiff specifically requested the award of front pay, and the Court has never ruled on that request.

2. The first two reasons offered by the Court for refusing to award plaintiff the job he requested provide no reason to deny the award of front pay. If the Court awards front pay, no innocent person will be affected, and plaintiff will remain in his present job.

3. As shown in the attached affidavit of plaintiff, unless the Court at least awards front pay, plaintiff will not be made whole for the discrimination he has suffered.

Respectfully submitted,

/s/ Joe R. Whatley, Jr.
JOE R. WHATLEY, JR.

[Denied 6/27/86, /s/ William M. Acker, Jr., Judge]

Of Counsel:

FALKENBERRY, WHATLEY & HEIDT
Fifth Floor Title Building
300 Twenty-First Street, North
Birmingham, Alabama 35203
205/322-1100

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the above and foregoing Motion to Alter or Amend Judgment has been serevd upon the following counsel of record by depositing a copy of same in the U. S. Mail, postage prepaid, on this the 26th day of June, 1986:

Robert N. Godfrey, Esquire
Paul R. Beshears, Esquire
Smith, Currie & Hancock
2600 Peachtree Center Harris Tower
233 Peachtree Street, N.E.
Atlanta, Georgia 30043-6601

Jay Clark, Esquire
Clark & Scott
P. O. Box 7687-A
Birmingham, Alabama 35253

/s/ Joe R. Whatley, Jr.
JOE R. WHATLEY, JR.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Civil Action No. CV 85-AR-2564-S

PETE A. MORRISON,
Plaintiff,

v.

GENUINE PARTS COMPANY,
Defendant.

AFFIDAVIT

STATE OF ALABAMA)
JEFFERSON COUNTY)

Upon being duly sworn, Pete A. Morrison deposes and says as follows:

1. I am submitting this affidavit to support the motion for rehearing which my attorneys are filing for me. While it is true as the Court stated in its Memorandum Opinion that I am presently employed as a warehouse manager by another employer, I am not being compensated at nearly the same level as the stockroom manager. In his deposition, Gary Egan testified that he is currently being paid $25,000.00 per year. I am only being paid $17,000.00 per year in my present position as warehouse manager. Thus, I am being paid $8,000.00 per year less than I would have been paid if I had been awarded the job of stockroom manager. I know of no possibility that

my pay with my present employer will be increased substantially in the foreseeable future.

/s/ Pete A. Morrison
PETE A. MORRISON

Sworn to and subscribed
before me this 23th day
of June, 1986.

/s/ Walter Johnson
Notary Public

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Civil Action No. 85-AR-2564-S

PETE A. MORRISON,
Plaintiff

vs.

GENUINE PARTS COMPANY,
Defendant

[Filed June 17, 1986]

ORDER

Plaintiff Pete A. Morrison shall have and recover of defendant Genuine Parts Company the sum of $3,658.87, for which execution shall issue if not paid within 30 days. The proceeds of this judgment shall be paid directly to the attorneys-of-record for plaintiff who, upon receipt thereof, shall satisfy said judgment on the records of this court.

Plaintiff's request for injunctive relief is still under advisement.

DONE this 17th day of June, 1986.

/s/ William M. Acker, Jr.
WILLIAM M. ACKER, JR.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Civil Action No. 85-AR-2564-S

PETE A. MORRISON,
Plaintiff

vs.

GENUINE PARTS COMPANY,
Defendant

[Filed June 17, 1986]

MEMORANDUM OPINION

The court gave the parties through June 13, 1986, to file briefs to suggest how to arrive at the amount of liquidated damages, if any, to be imposed against defendant, and the appropriateness of injunctive relief. The court has deferred the entry of judgment on the jury of June 2, 1986, until these left-over issues could be addressed.

For the reasons previously articulated by the court orally, the court will continue to hold Genuine Parts Company to the amount of lost wages which it stipulated as attributable to its failure to promote Pete A. Morrison, although it is probably true that it would not have entered into such a stipulation if it had fully understood the effect of the stipulation in the event Genuine Parts should prevail, as it did, on the question of constructive discharge. Therefore, pursuant to the formal stipulation between the parties and the jury finding of age discrimination, judgment will be entered in favor of plaintiff and

against defendant in the amount of $3,566.62, representing the direct monetary loss incurred by plaintiff as the proximate consequence of his not being promoted, even though Morrison would have been unable to prove this amount without going beyond the date of his voluntary resignation.

The statutory liquidated damages to be imposed in the event an ADEA violation is "willful" cannot, of course, exceed the amount of the actual damages. In the context of liquidated damages, which in this case is distinct from the context of actual damages, the damages as "stipulated" by the parties should not and will not control. Genuine Parts' stipulation of $3,566.62 in actual damages is not susceptible to an interpretation which would expose it to another $3,566.62 in liquidated damages, or a doubling of its strategy error. The actual damages of the pay differential in the job classifications accruing between the date of the failure to promote and the date of Morrison's voluntary resignation, as arithmetically computed, is $92.25. Based on the jury finding and upon the undisputed fact that General Part's decision makers who decided to pass over Morrison and to promote a younger man were well aware of the ADEA, the court finds that Genuine Parts' violation of the ADEA was "willful" and therefore that it should pay liquidated damages in the sum of $92.25. This amounts to a doubling of Morrison's actual monetary loss, as opposed to the loss stipulated by Genuine Parts not in contemplation of the present set of circumstances.

A money judgment will be entered accordingly.

Morrison also urges that he should be instated in the position which he was denied. The court will address this issue in a separate opinion.

DONE this 17th day of June, 1986.

/s/ William M. Acker, Jr.
WILLIAM M. ACKER, JR.
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Case Number: CV 85-AR-2564-S

PETE A. MORRISON,

Plaintiff

vs.

GENUINE PARTS COMPANY,

Defendant

[Filed June 4, 1986]

CLERK'S COURT MINUTES

This action came on for trial on June 2, 1986, before the Court and a jury, Honorable William M. Acker, Jr., United States District Judge, presiding, and the issues were duly tried and the jury duly rendered its verdict.

A written judgment will be entered by the court based on the Special Interrogatory to Jury, this date filed as follows:

> "Was the age difference between Pete A. Morrison and Rusty Eagan a determining factor in Genuine Parts Company's decision to promote Mr. Eagan rather than Mr. Morrison to stockroom manager?"
>
> ANSWER: "Yes".

GENE E. BELL
Acting Clerk

By: /s/ Rita F. Durnck
Deputy Clerk

DATED: June 4, 1986, Birmingham, Alabama

Court Reporter: Lee Cook